Supreme Court, U.S.
FILED
MAR 3 1993
OFFICE OF THE CLERK

Nos. 92-970 and 92-1286

In the Supreme Court of the United States

OCTOBER TERM, 1992

WOODS PETROLEUM CORPORATION, PETITIONER

v.

CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA, ET AL.

CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA, PETITIONER

v.

WOODS PETROLEUM CORPORATION, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a decision by the Secretary of the Interior to approve "communitization" agreements covering certain oil and gas leases made by an Indian tribe arbitrarily and capriciously failed to consider the economic best interests of the tribe, and if so whether the case should have been remanded to the Secretary for reconsideration of that issue.

2. Whether a "commence drilling" clause of a type common in oil and gas leases violates the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a-396g, when included in a lease made by an Indian tribe.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statement	2
Argument	11
Conclusion	18

TABLE OF AUTHORITIES

Cases:

Boesche v. *Udall*, 373 U.S. 472 (1963)	14
Cotton Petroleum Corp. v. *United States Department of the Interior*, 870 F.2d 1515 (10th Cir. 1989)	12, 15, 16
Dobbs v. *Zant*, 113 S. Ct. 835 (1993)	13
Florida Power & Light Co. v. *Lorion*, 470 U.S. 729 (1985)	12
Gray v. *Johnson*, 395 F.2d 533 (10th Cir.), cert. denied, 392 U.S. 906 (1968)	14
Jicarilla Apache Tribe v. *Supron Energy Corp.*, 728 F.2d 1555 (1984) (opinion of Seymour, J.), adopted, 782 F.2d 855 (en banc), supplemental opinion, 793 F.2d 1171 (10th Cir.) (en banc), cert. denied, 479 U.S. 970 (1986)	3
Kardokus v. *Walsh*, 797 P.2d 322 (Okla. 1990)	5
Kenai Oil & Gas, Inc. v. *Department of the Interior of United States*, 671 F.2d 383 (10th Cir. 1982)	7, 15, 16
Maine v. *Taylor*, 477 U.S. 131 (1986)	12
Poafpybitty v. *Skelly Oil Co.*, 390 U.S. 365 (1968)	3
Quern v. *Jordan*, 440 U.S. 332 (1979)	17
Samedan Oil Corp. v. *Cotton Petroleum Corp.*, 466 F. Supp. 521 (W.D. Okla. 1978)	4-5
Sierra Club v. *Hodel*, 848 F.2d 1068 (10th Cir. 1988)	12
United Nuclear Corp. v. *United States*, 912 F.2d 1432 (Fed. Cir. 1990)	13, 14
United States v. *Mendoza*, 464 U.S. 154 (1984)	12
Wisniewski v. *United States*, 353 U.S. 901 (1957)	16

Statutes and regulations: Page

Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a *et seq.*:
25 U.S.C. 396a 2, 9, 17
25 U.S.C. 396a-396g 3
25 U.S.C. 396d 4
28 U.S.C. 1292(b) 9, 17
25 C.F.R.:
Pt. 171 (1981) 3
Section 171.21(b) (1981) 4
Pt. 211 3
Section 211.21(b) 4, 12

Miscellaneous:

47 Fed. Reg. 26,920 (1982) 7
56 Fed. Reg. (1991):
p. 58,734 12
p. 58,738 12
p. 58,741 12
57 Fed. Reg. 40,298 (1992) 12
R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* (6th ed. 1986) 16-17
18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* (1981 & Supp. 1992) 17

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App.[1] 1-17) is reported at 966 F.2d 583. The opinions of the district court (Pet. App. 18-60, 61-85) are unreported.

[1] Unless otherwise indicated, "Pet." and "Pet. App." refer to the petition and appendix in No. 92-970.

The opinions of the Board of Indian Appeals (Pet. App. 110-120, 137-145) are reported at 91 Interior Dec. 229 and 90 Interior Dec. 61.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 1992. A petition for rehearing was denied on November 2, 1992. Pet. App. 155.[2] The petition for a writ of certiorari in No. 92-970 was filed on December 7, 1992, and the petition in No. 92-1286 was filed on February 1, 1993 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

These cases involve four leases entered into between the Cheyenne-Arapaho Tribes of Oklahoma (the Tribe) and Woods Petroleum Corporation (Woods), providing for the development of oil and gas resources underlying certain tribal lands. Three of those leases (at issue in No. 92-970) expired by their terms in 1981, unless certain "communitization" agreements entered into by Woods as lessee were properly approved by the Department of the Interior (the Department) and therefore legally effective to extend the period of the leases. The status of the fourth lease (at issue in No. 92-1286) depends at least in part on whether a "commence drilling" clause, which is common in such leases, is void under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a. If

[2] The Cheyenne-Arapaho Tribes of Oklahoma filed a second petition for rehearing on December 17, 1992. The court of appeals denied that petition as untimely on January 5, 1993. On January 15, 1993, the Tribe lodged with the court of appeals a motion for leave to file another rehearing petition out of time.

the leases had expired in 1981, it is possible that because of changed market conditions the Tribe would have been able to negotiate new leases for substantially greater compensation. See Pet. App. 13-14.

1. Oil and gas leasing by Indian tribes is governed primarily by the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a-396g, and relevant regulations at 25 C.F.R. Pt. 211, formerly 25 C.F.R. Pt. 171 (1981). Although the Indian tribes are the lessors under the 1938 Act, the leases and their administration are subject to fiduciary approval and oversight by the Secretary of the Interior, acting through the Bureau of Indian Affairs. Pet. App. 11-12; see generally *Jicarilla Apache Tribe* v. *Supron Energy Corp.*, 728 F.2d 1555, 1564-1565 (1984) (opinion of Seymour, J.), adopted, 782 F.2d 855 (en banc), supplemental opinion, 793 F.2d 1171 (10th Cir.) (en banc), cert. denied, 479 U.S. 970 (1986). Cf. *Poafpybitty* v. *Skelly Oil Co.*, 390 U.S. 365, 372, 374-375 (1968) (similar federal oversight of leases by Indian allottees).

In 1976 the Tribe entered into four oil and gas leases with Woods, each comprising a 160-acre quarter section in Custer County, Oklahoma. See Pet. App. 131 (chart), 136 (map); 92-1286 Pet. App. 88 (map). Each lease was for a primary term of five years from the date it was approved by the Department of the Interior, plus "as much longer thereafter as oil and/or gas is produced in paying quantities from [the leased] land." Pet. App. 54 (quoting leases). Each lease also contained a "commence drilling" clause, common in oil and gas leases (see *id.* at 55-57), under which the term of the lease would be conditionally extended beyond the primary term so

long as drilling was commenced within that term.[3] Without extension, the basic five-year term of each lease would have expired on May 10, 1981. *Id.* at 131.

Each lease also contained a "unit operation" clause. See Pet. App. 3-4. Large oil and gas deposits underlying land held by various owners are commonly developed under a unitary plan in order to ensure efficient recovery of the entire deposits. Costs and revenues of production for the development unit as a whole are typically allocated among those with ownership interests in the unit. In Oklahoma, the formation and continuation of such units come under the jurisdiction of the Oklahoma State Corporation Commission. In 1980, the Commission established 640-acre drilling and spacing units for survey sections 29 and 32, at issue here. See *id.* at 20, 136. Actual drilling is typically permitted at only one location in a given spacing unit.

The state Commission does not have the power to order Indian lands pooled into a spacing unit. See, *e.g.*, Pet. App. 119. Joinder of Indian tracts is instead achieved through a "communitization agreement," which must receive both the consent of the tribal lessor and the approval of the Secretary of the Interior. See, *e.g.*, 25 C.F.R. 211.21(b) (formerly 25 C.F.R. 171.21(b) (1981)); 25 U.S.C. 396d. See also *Samedan Oil Corp.* v. *Cotton Petroleum Corp.*, 466 F.

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[3] "If the lesse[e] shall commence to drill a well within the term of this lease, the lessee shall have the right to drill such well to completion with reasonable diligence and if oil or gas or either of them be found in paying quantities this lease shall continue and be in force with like effect as if such well had been completed within the term of years herein first mentioned." Pet. App. 54 (quoting leases).

Supp. 521, 526 (W.D. Okla. 1978); *Kardokus* v. *Walsh*, 797 P.2d 322, 324-325 (Okla. 1990). In recognition of the likelihood that such agreements would be entered into with respect to the individual tracts at issue here, and of the need for consent and approval, each lease contained a "unit operation" clause (Clause 9), which provided:

> The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the lease[d] lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

Pet. App. 3 (quoting leases).

Under a communitization agreement, drilling operations and production occurring anywhere within the communitized area are deemed to occur on each tract within the area for purposes of the development lease on each tract. Pet. App. 3-4; *id.* at 57-58 (quoting agreement). Thus, a valid communitization agreement covering one or more of the leases at issue here, in conjunction with each lease's commence drilling clause, would automatically extend the primary term of each covered lease if drilling was commenced on any tract within the communitized area prior to the May 10, 1981 expiration date in the lease. *Id.* at 3-4.

2. On April 1, 1981, Woods entered into two communitization agreements with Reading & Bates Petroleum Co., the owner of the remaining leases in survey sections 29 and 32. Pet. App. 4. See also *id.* at 136; 92-1286 Pet. App. 88 (maps). The agreements pooled the mineral interests in each section, and in

each case designated Reading & Bates as the unit operator. Pet. App. 4. Drilling operations had commenced in November 1980 on the northeast quarter of section 29, which was leased by the Tribe to Reading & Bates. *Id.* at 20. On May 6, 1981, four days prior to expiration of the five-year primary term of the Woods leases, Reading & Bates commenced drilling on the northwest quarter of section 32, which was leased by the Tribe to Woods. *Ibid.* As explained above, if the communitization agreements were legally effective, then commencement of drilling on one tract in each communitized section automatically extended the term of each of the Woods leases.

Reading & Bates failed to obtain the Tribe's consent to the communitization agreements with Woods. The Tribe believed that because of market conditions prevailing in the leased area at the time, the leases should be allowed to expire and renegotiated for substantially increased compensation. See, *e.g.*, Pet. App. 4, 21, 45-46.[4] Reading & Bates nonetheless submitted the agreements for approval by the Department of the Interior on May 5, 1981. *Id.* at 4-5. On May 8, 1981, the Acting Area Director of the Anadarko Area office of the Department's Bureau of Indian Affairs (BIA) approved both agreements. *Id.* at 5. The Tribe appealed to the Deputy Assistant Secretary of the Interior, who affirmed the Area

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[4] The courts below noted (Pet. App. 13-14, 45) that the Woods leases were negotiated in 1976 at a rate of $35 per acre and a 16 2/3% royalty, whereas the Tribe was able to lease two other tracts in the same sections (and same proposed communitized areas) to Reading & Bates in February 1980 for $235 and $315 per acre, respectively, in each case with a 20% royalty. See also *id.* at 136; 92-1286 Pet. App. 88 (maps).

Director's decision on February 9, 1982. *Id.* at 5, 153-154. On February 10, 1983, the Department's Board of Indian Appeals affirmed the Deputy Assistant Secretary's decision. *Id.* at 5, 137-152.

The Board subsequently granted the Tribe's petition for rehearing. It also requested additional information from the BIA concerning whether the Acting Area Director, before approving the communitization agreements, had considered whether the long-term economic effects of those agreements would be in the best interest of the Tribe. Pet. App. 5, 114-115, 119-120.[5] After reviewing the additional information supplied by the BIA, *id.* at 121-136, the Board concluded that he had. *Id.* at 119-120. On May 18, 1984, the Board sustained its previous decision.

3. The Tribe then commenced this suit in the district court, seeking (on a variety of grounds) a declaration that all four leases with Woods had expired at the end of their primary terms on May 10, 1981. Pet. App. 22-23. On review of the administrative record (and at the Tribe's request, *id.* at 61-62), the district court remanded the matter to the Department for responses to a number of questions,

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[5] This inquiry was required under Department guidelines issued in April 1982, almost a year after the Area Director had approved the communitization agreements at issue here, in order to assist BIA officials in evaluating and approving or disapproving such agreements. Pet. App. 107-109. See also *id.* at 73, 112, 148-150; 47 Fed. Reg. 26,920 (1982). The 1982 guidelines were issued in response to the decision in *Kenai Oil & Gas, Inc.* v. *Department of the Interior of United States*, 671 F.2d 383 (10th Cir. 1982), which held that Department approval of communitization agreements was governed by fiduciary standards that required consideration of the economic interests of the Indian lessor. Pet. App. 72-73.

id. at 83-85, including whether the BIA Area Director had considered "evidence of the market value and marketability of new leases that could have been negotiated had the communitization agreements not been approved." *Id.* at 84. In March 1987 the Department filed a detailed response, *id.* at 86-109, which informed the court, *inter alia*, that in making his decision "[t]he Acting Area Director did not consider any evidence of the market value and marketability of new leases." *Id.* at 94.

In May 1989 the district court granted partial summary judgment in favor of the Tribe. Pet. App. 59-60. The court found that the Acting Area Director breached his fiduciary responsibility to the Tribe by approving the communitization agreements without adequately considering then-current economic conditions or "exploring any options," such as the possible benefits to the Tribe of disapproving the agreements and thus allowing termination and renegotiation of the leases. *Id.* at 51. The court acknowledged that the Acting Area Director's action "might be supportable" if it had been "based on the study of conditions prevailing at that time," but found that it was not based on any such study. *Ibid.* The court therefore held that the communitization agreements at issue had not been properly approved and were not effective to extend the terms of the three Woods leases covering tracts on which no wells had actually been drilled. *Id.* at 51-52, 60.

The fourth Woods lease, which covered a tract on which drilling had in fact commenced, was extended beyond the initial five-year term by its own "commence drilling" clause. It accordingly was not affected by the district court's invalidation of the

communitization agreements. With respect to the fourth lease (as well as the others), the Tribe argued, *inter alia*, that the "commence drilling" clauses in the leases were void because they conflicted with the terms of the Indian Mineral Leasing Act of 1938. Pet. App. 22.[6] The district court rejected that argument, concluding that neither the 1938 Act nor applicable precedents supported the Tribe's position. *Id.* at 55-57. The court thus rejected the legal grounds proffered by the Tribe in contending that the fourth lease expired in 1981,[7] although it entered no definitive order concerning the validity of that lease. See *id.* at 59-60.

The district court certified its decision for immediate appeal under 28 U.S.C. 1292(b), and the court of appeals granted Woods and the Tribe leave to appeal. See Pet. App. 7-8; 92-1286 Pet. 9 & n.10. The federal respondents did not join in either petition for appellate review and did not participate in briefing or argument before the court of appeals.

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[6] The Indian Mineral Leasing Act provides that tribal lands may be leased for mining purposes "for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities." 25 U.S.C. 396a. The Tribe contended (as it contends in its petition in No. 92-1286) that under this statutory language a lease may be extended only by the actual production of minerals in paying quantities during the primary term of the lease. See Pet. App. 53-54.

[7] The Tribe also argued that the communitization agreements amended the leases to require actual production, rather than commencement of drilling, in order to extend their terms. The district court rejected that argument as improperly raised and substantively unpersuasive, Pet. App. 57-59, and the Tribe does not renew it in this Court.

4. The court of appeals agreed with the district court that the BIA's Acting Area Director had abused his discretion in approving the communitization agreements at issue without considering what would be in the economic best interests of the Tribe in light of the unusual market conditions at the time of the decision. Although the Department had taken the position on remand from the district court that disapproval of the agreements would have resulted in the loss of several leases that probably could not be successfully renegotiated under the threat of litigation from the former lessees, see Pet. App. 14, the court of appeals held (*id.* at 16):

> The Area Director was not free to conclude, without some consideration of the present market conditions, that new leases would be as difficult to negotiate as they would have been in pre-boom times. Absent consideration of current market developments, the Area Director's conclusion that he could not protect the Tribe's economic interests if the communitization agreements were disapproved was inconsistent with the agency's fiduciary obligations to the Tribe.

On this basis, the court concluded that in approving the agreements without more detailed consideration of the Tribe's economic interests, the Department had breached its fiduciary responsibilities to the Tribe. Like the district court, the court of appeals did not remand the case to the Department for reconsideration of the communitization agreements in light of the additional factors outlined by the court. It instead affirmed the district court's judgment that the communitization agreements were not valid and that

the three leases under which drilling had not commenced as of May 10, 1981, had therefore expired on that date. *Id.* at 17.

The court of appeals explicitly noted the Tribe's contention that the commence drilling clause in all four leases conflicted with the Indian Mineral Leasing Act and that all four leases therefore expired in 1981 for failure to achieve actual production in paying quantities before the end of the primary term. Pet. App. 8. The court believed, however, that its ruling on the abuse of discretion issue would "effectively dispose of [the] action," *ibid.*, and it therefore declined to address the statutory issue or to enter a judgment affecting the status of the fourth lease. *Id.* at 17.

ARGUMENT

We do not concede that the BIA abused its discretion in approving the communitization agreements at issue in this case. The decision on that issue below, however, merely applied settled law to a specific set of facts. That decision does not conflict with any decision of this Court or of any other court of appeals, and it does not merit plenary review. Moreover, although we agree that the court of appeals should have decided the Indian Mineral Leasing Act question relevant to the status of the fourth Woods lease, in the absence of consideration by the court of appeals the district court's ruling on that question is not ripe for interlocutory review by this Court.

1. Woods' primary contention (Pet. 8-11) is that the court of appeals erred by "rendering the approval of the Woods Communitization Agreements void without remand" to the Department of the Interior for recon-

sideration in light of the specific market factors identified as relevant by the court. Pet. 8.[8] We agree that if an administrative agency "has not considered all relevant factors, * * * the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Florida Power & Light Co.* v. *Lorion*, 470 U.S. 729, 744 (1985); see also, *e.g.*, *Sierra Club* v. *Hodel*, 848 F.2d 1068, 1093-1094 (10th Cir. 1988). But not every error in a court of appeals' disposition of a case warrants correction by this Court, and we do not believe that the remand issue here warrants review. See *United States* v. *Mendoza*, 464 U.S. 154, 161 (1984); *Maine* v. *Taylor*, 477 U.S. 131, 136 n.5 (1986). The question whether, applying standards set forth in Department guidelines and proposed regulations[9] and accepted by

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[8] In *Cotton Petroleum Corp.* v. *United States Department of the Interior*, 870 F.2d 1515, 1528 (1989), relied on by Woods and discussed below, the Tenth Circuit similarly refused (over the government's objection) to remand a factually similar case to the Department for reconsideration.

[9] See notice of proposed rulemaking, 56 Fed. Reg. 58,734 (1991), comment period reopened, 57 Fed. Reg. 40,298 (1992). As proposed, 25 C.F.R. 211.28 would amend and expand upon current Section 211.21(b), which governs approval of communitization agreements. Proposed Section 211.28(a) provides that approval must be "advisable and in the best interest of the Indian owner." 56 Fed. Reg. 58,741 (1991). "In the best interest of the Indian mineral owner" is newly defined by proposed Section 211.3, 56 Fed. Reg. 58,738 (1991), which provides that the BIA, in considering

> whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a * * * communitization agreement), * * * may consider any relevant factor, including, but not limited to, economic

the parties, the Department abused its discretion in approving the Woods communitization agreements is of little importance to anyone but the parties in this case. See, *e.g.*, *Dobbs* v. *Zant*, 113 S. Ct. 835, 837 (1993) (Scalia, J., concurring in the judgment).

2. Woods further contends (Pet. 11) that the decision below conflicts with *United Nuclear Corp.* v. *United States*, 912 F.2d 1432 (Fed. Cir. 1990). In that case, the court found that although a mining plan submitted by United Nuclear satisfied all legal and regulatory requirements, the Department had refused to approve it without the consent of the tribal lessor, effectively granting the tribe a veto power not contemplated in the regulatory scheme or in prior practice or negotiations. *Id.* at 1433-1434. Because United Nuclear was unable to start mining without the consent that the tribe had withheld, the lease eventually lapsed according to its terms. *Id.* at 1433.

The *United Nuclear* majority concluded that in that case the Department, without independent analysis and in the absence of any legal or contractual requirement, had abdicated its responsibility to exercise discretion and had simply deferred to the tribe. 912 F.2d at 1436-1438. Acknowledging that differentiating between exercises of regulatory authority and government "takings" was "a close, difficult, and complex process," the majority held that on the particular facts presented, the Department's

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considerations such as date of lease expiration, probable financial effect on the Indian owner, leasability of land concerned, need for change in the terms of the existing lease, marketability, and potential environmental, social, and cultural effects.

actions amounted to a taking of United Nuclear's contractual rights. *Id.* at 1435.

The record in this case discloses no abdication of independent decision-making by either the Department or the courts below. The Department's decision to approve the communitization agreements, which Woods supports, of course did not "defer" in any respect to the wishes of the Tribe. The courts, on the other hand, concluded that the Department had failed to consider the economic interests of the Tribe adequately in light of existing market conditions, and had therefore breached a specific legal responsibility to the Tribe. Unlike in *United Nuclear*, where the courts found that the proposed mining plan "satisfied all of the requirements" for approval and the Department simply refused to approve them, 912 F.2d at 1433, in this case the courts found that the proposed agreements were not in the economic best interest of the Tribe, and therefore should not have been approved under applicable legal and regulatory standards. Woods, which of course negotiated the leases against a background of pervasive regulation and the Department's fiduciary responsibility toward the Indian tribes, had no vested right to have its leases extended beyond their primary terms by approval of any particular communitization agreements, or to have such approval upheld by reviewing courts. See *Boesche* v. *Udall*, 373 U.S. 472, 485 (1963) (cancellation of mineral lease issued contrary to regulations); *Gray* v. *Johnson*, 395 F.2d 533, 537 (10th Cir.) (revocation of erroneous approval of Indian lease), cert. denied, 392 U.S. 906 (1968). Whatever the merits of the holding in *United Nuclear*, it does not conflict with the decision below.

3. Woods also argues (Pet. 12-13) that the decision below is inconsistent with another decision of the Tenth Circuit, *Cotton Petroleum* v. *United States Department of the Interior*, 870 F.2d 1515 (1989). In *Cotton*, the court of appeals reversed a decision by the Department of the Interior *not* to approve a communitization agreement in circumstances similar to those in this case. The Tenth Circuit held that the Department acted arbitrarily by "refus[ing] to approve an otherwise fair and proper communitization agreement for the *sole purpose* of causing the underlying lease * * * to expire." *Id.* at 1528. The court distinguished its prior decision in *Cotton* on the ground that although its decision here had "the ultimate effect of denying the communitization agreements, that effect is merely the aftermath of the [Department's] failure to consider the prerequisite relevant economic factors in [its] decision to approve the agreements." Pet. App. 16 n.14. *Cotton*, in turn, had distinguished the same court's earlier decision in *Kenai Oil & Gas, Inc.* v. *Department of the Interior of United States*, *supra*, on the ground that in *Kenai* the Department had considered all relevant factors and had disapproved the communitization agreements at issue for all purposes, not (as in *Cotton*) merely for purposes of terminating the leases while retaining the Indian lessors' rights to share in the profits of communitized production. 870 F.2d at 1525-1526, 1528 n.4.[10]

[10] As the Tribe points out in its brief in opposition (at 9-15) in No. 92-970, the exact extent to which the decisions below invalidated the Woods communitization agreements appears to remain open for consideration on remand in this case.

We agree with Woods that there is tension between the judgments in this case and in *Cotton*, and we likewise find it difficult to reconcile the result in *Cotton* with that in *Kenai*. But although the decisions reach different results on their particular facts, they articulate essentially the same legal standards concerning appellate review of Department actions, the Department's fiduciary responsibility to Indian tribes, and the factors that the Department should consider when asked to approve a communitization agreement.[11] The Tenth Circuit evidently considers the decisions consistent, as indicated by the discussions noted above, by the denial of the government's petition for rehearing and suggestion of rehearing *en banc* in *Cotton*, and by the denial of Woods' and the Tribe's similar petitions in this case.[12] In any event, whatever conflict may exist among decisions of different panels of a single court of appeals can normally be left for resolution by that court. We perceive no extraordinary circumstances that would justify a different result here. See *Wisniewski* v. *United States*, 353 U.S. 901 (1957); R.

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[11] See, *e.g.*, *Kenai*, 671 F.2d at 386-387; *Cotton*, 870 F.2d at 1525-1526; Pet. App. 12-15 (Department must consider all relevant factors in reaching decision on proposed agreement). See also *Kenai*, 671 F.2d at 386; *Cotton*, 870 F.2d at 1525, 1529; Pet. App. 10-13 (approval or disapproval is discretionary and may be set aside only if it is arbitrary or capricious or reflects a clear error of judgment).

[12] Similar issues are once again before the Tenth Circuit, in the context of leases by Indian allottees, in *Woods Petroleum Corp.* v. *Department of Interior*, No. 92-6052 (10th Cir., argued and submitted Jan. 11, 1993).

Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* 204-206 (6th ed. 1986).

4. Finally, the Tribe's petition in No. 92-1286 argues that the Court should grant certiorari to consider whether the common "commence drilling" clause contained in the Woods leases violates the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a. As the Tribe concedes (92-1286 Pet. 9-10), the court of appeals adverted to but explicitly declined to decide this issue. Moreover, as the Tribe points out in its brief in opposition in No. 92-970, this Court ordinarily will not review questions not considered or passed upon by the court of appeals. See Br. in Opp. 9-10 & n.11, and cases there cited.

In this case, the district court considered and rejected the Tribe's argument, and the court of appeals granted interlocutory review of the question under 28 U.S.C. 1292(b). We agree that the court of appeals' ultimate decision did not resolve the status of the fourth Woods lease (and therefore did not "effectively dispose of this action," Pet. App. 8), and that having granted review it would have been preferable for the court of appeals to have decided the question at this interlocutory stage. Because it did not do so, however, its judgment can have no preclusive effect on this issue, either in further proceedings in this case or in future cases. See, *e.g.*, *Quern* v. *Jordan*, 440 U.S. 332, 347 n.18 (1979); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* §§ 4420, 4478 & n.2 (1981 & Supp. 1992). Assuming, therefore, that review is denied in No. 92-970 and the case is returned to the district court for further proceedings, the Tribe will have ample opportunity to raise the Indian Mineral Leasing Act issue once

again on an appeal from the district court's final judgment. We therefore see no reason to depart here from this Court's general practice of not granting review of questions not decided by the court of appeals.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1993